IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.587/2005

Reserved on 8.5.2007

Decided on: 29.5.2007

Superintending Engineer,HPSEB & another. …Petitioners.

Versus

Bhura Ram and another. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. Yes*

For the petitioners : Mr. Sharwan Dogra, Advocate

For the respondent No.1 Mr. Rajnish K. Lal, Advocate.

Rajiv Sharma, J.

By way of this petition, award dated 11.3.2005 passed by learned Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala in reference No. 3 of 2001 has been assailed. The Government has made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether termination of services of Shri Bhura Ram, Ex-daily wages Beldar w.e.f. 1.5.98 by (1) Superintending Engineer, H.P. State Electricity Board, Electrical Circle, Bilaspur, Himachal Pradesh and (2) Executive Engineer, Electrical Division, Himachal Pradesh Electricity Board, Bilaspur, H.P. without any notice, charge-sheet, enquiry and without compliance of section 25 (H), 25 (B) and 25 (F) of the Industrial Disputes Act, 1947 on completion of 240 days continuous service in**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?Yes

violation of certified standing orders, as alleged, is legal and justified. If not, to what relief of consequential service benefits including re-instatement, seniority, back wages and amount of compensation, Shri Bhura Ram is entitled?"

In sequel to the reference, respondent (herein referred to as the workman) filed a statement of claim before the Labour Court. The employer had also filed reply to the statement of claim. The case set out by the workman before the Labour Court was that he was employed as daily paid Beldar in Electricity Department on 26.6.1986 in Section Beri and he discharged his duties till 25th November, 1998. As per the statement of claim, he was retrenched with effect from 26th November, 1998. The averment contained in the statement of claim was that the employer had not followed the provisions of Section 25-F, G and H of the industrial Disputes Act, 1947 while retrenching him with effect from 26th November, 1998. The Labour Court has answered the reference in favour of the workman and held his termination from service in violation of provisions of section 25-F (a) (b) and (c) and 25 G and H of the Industrial Disputes Act, 1947 and consequently he was directed to be reinstated on the same terms and conditions in which he was working prior to his retrenchment. The workman was held entitled to consequential benefits from the year 1999 onwards for counting his seniority and payment of back ages.

Mr. Shrawan Dogra, Advocate appearing on behalf of the employer i.e. H.P. State Electricity Board has contended that the award dated 11.3.2005 is not sustainable in the eyes of law.

Mr. K.D. Sood, Advocate appearing on behalf of the workman has supported the award dated 11.3.2005.

I have heard the parties and perused the record.

The workman was engaged as Beldar with effect from 26.6.1986 to 25.11.1988. The workman, as per the man-day's chart filed with this petition as well as before the Labour Court, had completed 240 days preceding 12 calendar months from the date of retrenchment. The workman was thus entitled to the protection of 25-F of the Industrial Disputes Act, 1947. Mr. Sada Ram, Assistant Executive Engineer, Electrical Sub Division No.1, H.P.S.E.B, Bilaspur had admitted in his cross-examination that workmen, namely, Sh. Sita Ram, Nand Lal, Lalman and Pritam Lal were retained by the employer at the time of retrenchment of the workman. The Labour Court on the basis of the statement of Assistant Executive Engineer has held that the management had violated the provisions of section 25-G of the Industrial Disputes Act. This finding recorded by the Labour Court on the basis of the evidence cannot be interfered by this Court while exercising the powers vested under Articles 226 and 227 of the Constitution of India. The plea raised by the employer before the Labour Court that it was a case of abandonment and not of retrenchment has also been repelled by the Labour Court while discussing the evidence led by the respective parties. The Labour Court while giving protection of section 25-G of the Industrial Disputes Act, 1947 to the workman had considered the statement made by RW-1, who had admitted that the principle of last go first come was not followed. Similarly, the Labour Court has also given a finding that new workmen were engaged without offering the job to the respondent. The Labour Court on the basis of the evidence led by the parties that new workmen were engaged has rightly held the petitioner entitled to protection of section 25 (H) of the Industrial Disputes Act, 1947. The plea of employer before the Labour Court that there was delay and laches in seeking reference to the Labour Court has been repelled by the Labour Court on the basis of

evidence led by the parties and after taking into consideration the judgment rendered by this Court in ***Nagar Parishad Bilaspur Vs. Bone Ram and another***, 2005 (1) Shim. L.C.79 and in ***Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and others***, AIR 2000 Supreme Court 839.

This Court has considered the question of delay and laches in CWP No. 95 of 2000 decided on 26.8.2004 titled as Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. Vs. Dilu Ram. This Court has held as under:

> **"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1967 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh Vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82)."**

The Labour Court while repelling the contention of the Management of delay and laches had also given findings that the plea of delay and laches was not raised before the conciliation Officer. The Hon'ble Supreme Court has held in Sapan Kumar Pandit Vs. U.P. State Electricity Board, (2001) 6 SCC 222 as under:

> **"There are cases in which lapse of time had caused fading or even eclipse of the dispute, if nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though**

not galvanized by the workmen or the union on account of other justified reasons, it does not cause the dispute to wane into total eclipse."

The upshot of the above discussion is that there is no merit in the writ petition and accordingly the same is dismissed with no order as to costs. The award dated 11.3.2005 passed by the Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala, H.P. is upheld.

(Rajiv Sharma), Judge

May 29, 2007
Awasthi